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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Mexico: Torture unchecked

In 1994 the Federal law to prevent and punish torture was passed and since then all but one of Mexico's 31 states and the Federal District have either established a separate law or incorporated into their criminal codes the offence of torture. Guerrero state, the last to do so, is awaiting approval of a bill to criminalize torture. However, most of the state level legislation falls well short of the international standards. In 2008, constitutional reforms set in motion judicial reforms intended to strengthen due process guarantees of victims and accused, including increased judicial scrutiny of detention and evidence. These reforms must be introduced by 2016, but so far only a handful of states have complied. A bill to establish a single criminal procedural code for all state and federal criminal jurisdictions was approved by Congress in early 2014. In 2011, Constitutional human rights reforms recognised the constitutional status of human rights treaties, providing for their direct application as well as remedy through *amparo* procedures.

In this statement, Amnesty International sets out its principal concerns in relation to torture and other ill-treatment in Mexico and includes recommendations to the Human Rights Council

Torture and other ill-treatment continue to be used routinely by a wide range of police and security forces to gather information, support charges against criminal suspects and during public order disturbances. The extensive legal and administrative measures established to prevent and punish torture are largely ineffective or not applied. The situation has deteriorated significantly in recent years as police and security forces have regularly resorted to torture or other ill-treatment as part of measures to counter organized crime. There were 7,164 complaints of torture and other ill-treatment registered with the National Human Rights Commission (CNDH) between 2010 and 2013, but the federal judiciary has recorded only 7 convictions for torture. Complaints of torture and other ill-treatment are rarely investigated adequately. As a result, perpetrators are not held to account and statements obtained under torture continue to be accepted as evidence in judicial proceedings.

Rather than uphold evidential standards in line with international human rights law in order to deter the use of torture and other ill-treatment, the criminal justice system often depends on information obtained via coercion to mount prosecutions and detain criminal suspects. The absence of well-founded and solid police investigations to support charges, frequently means judges ignore evidence of torture and other ill-treatment in order uphold the legality of detentions and avoid being accused of being soft on crime. Criminal suspects face almost insurmountable obstacles to demonstrating their complaints, as judicial officials are predisposed to view allegations as a baseless defensive strategy to avoid prosecution. In effect, to make a complaint of torture or other ill-treatment is likely to be taken as confirmation of guilt of the criminal suspect.

Most criminal suspects, particularly the poorest are forced to accept public defenders when making their first crucial statement to the public prosecutor, usually in the presence of police who may have been responsible for their torture or other ill-treatment. Amnesty International has interviewed many victims of torture and other ill-treatment who have alleged that they were not allowed access to a lawyer until signing their statement, and that they were forced to accept the representation of public defenders for their first statement to the prosecutor. Such lawyers often reportedly ignored evidence of torture or other ill-treatment or in some cases encouraged detainees to sign statements in order to avoid further torture or other ill-treatment.

The first statement rendered to the public prosecutor continues to be granted greater evidential value than the statement subsequently rendered to the judge in the presence of a lawyer, whereby the first statement is held to be truer by virtue of being close temporally to the events and the accused has not had time to consult with his or her lawyer. The UN Committee Against Torture and the Inter-American Commission of Human Rights have called for this legal principle to be reformed in line with due process and human rights standards[1].

[1] Committee against torture, report on Mexico (can't find correct ref, paragraph 15), OPCAT, CAT/OP/MEX/1, para 144, Inter American Commission of Human Rights, INFORME N° 2/99, CASO 11.509, MANUEL MANRÍQUEZ

Preventive pre-charge detention, *arraigo*, continues to be widely used to hold suspects in the custody of prosecutors pending investigations despite repeated recommendations by UN human rights mechanisms for it to be abolished.

Medical examinations

When a suspect is detained and placed at the disposition of the public prosecutor or arraigned into prison, he or she will be subject to a cursory medical examination, frequently in the presence of those who may have been responsible for torture or other ill-treatment. The medical professionals who conduct these examinations are employees of the public prosecutor's office or the prison system. Many detainees report that they are not examined or questioned about any injuries they may present. These medical reports frequently contain no detail except a confirmation that the detainee did not present physical injuries. No photographic evidence is taken. These medical procedures are not consistent with the Istanbul Protocol.

In 2002 the Federal Attorney General's Office (Procuraduria General de la República, PGR) adopted special medical examination procedures to assess possible torture cases based on the Istanbul Protocol. However, these medical examinations which often take place many years after the alleged torture are rarely applied and frequently fail to detect evidence of torture. If this procedure fails to confirm evidence of torture, prosecutors and judges take this as evidence that the complaint of torture is false. The Subcommittee for the Prevention Torture expressed concerns at the failings of this procedure in 2010.

This official medical examination also plays a key role in judicial proceedings. Under Mexico's present legal system, the evidence provided by official experts working for the public prosecutor's office are granted greater official evidential status, whilst an examination by independent medical expert, including when carried out by the CNDH or one of the 32 state level human rights commissions, only have the status of public documents, which a judge may disregard in favor of official evidence. In these circumstances, it is extremely difficult to challenge official medical findings or sustain independent evidence of torture or other ill-treatment in judicial proceedings. As a result, judges are more inclined to rule statements admissible even where there is independent evidence of torture or other ill-treatment.

Amnesty International calls upon the members and observer states of the Human Rights Council to urge Mexico to:

- review the official medical examination procedures of the Federal Attorney General's Office in cases of possible to torture or other ill-treatment to ensure they are consistent with the Istanbul Protocol and form part of a prompt, impartial and exhaustive investigation of complaints of torture and other ill-treatment;

- ensure that initial medical examination of detainees applies the standards of the Istanbul Protocol to fully document the physical and psychological condition of the detainee in an environment where all evidence can be adequately recorded, including through use of photographic evidence. These and all other medical reports should be available to detainees and their legal representative from the earliest possible moment;

- separate the medical forensic services from offices of judicial police and prosecutors to ensure their operational independence;

- ensure that independent medical experts are allowed access to detainees at the earliest moment and that their evidence is granted evidential value in court proceedings on the basis of the quality of the expert evidence, not its official status;

- ensure detainees have access to legal defence, including private lawyers, from the moment of detention and are able to report complaints of ill-treatment at the earliest moment;

MÉXICO 23 de febrero de 1999, para 77

- abolish *arraigo* and ensure accurate recording of detention location, time, participants etcetera, which should be made available to defence lawyers from the earliest moment; and

- ensure that all complaints of torture and other ill-treatment result in a full investigation and that police, prosecutors or judges who fail to record evidence of torture or other ill-treatment face investigation and if necessary sanction.